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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,750	07/12/2001	Robert Noodelijk	CHRE:111	9605
<div>7590 12/12/2007 Charles A. Wendel Step toe &amp; Johnson LLP. 1330 Connecticut Avenue,N.W. Washington, DC 20036</div>			<div>EXAMINER HELMER, GEORGIA L</div> <div>ART UNIT 1638 PAPER NUMBER</div> <div>MAIL DATE 12/12/2007 DELIVERY MODE PAPER</div>	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/902,750

**Applicant(s)**

NOODELIJK, ROBERT

**Examiner**

Georgia Helmer

**Art Unit**

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Office Action

1. The Office acknowledges receipt of Applicants Response dated 12 July 2005.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by NL PBR CHR 3118 published 19 April 1999, in light the 2000 version of the Chrysanthemum Breeders Association (CBA) catalogue first distributed in November 1999 and *Royal Horticultural Society Dictionary of Gardening* 1992, ed. Huxley, Griffiths, Levy; Macmillan Press, London; The Stockton Press, New York NY; vol. 4, pages 612-618.

The Chrysanthemum Breeders Association (CBA) catalogue first distributed in November 1999 describes the claimed chrysanthemum 'Cream Elite Reagan'

Applicant's arguments set forth in the response dated 12 July 2005 have been carefully reviewed and considered, and are found to be nonpersuasive. Applicant traverses saying primarily that the "PBR documents for the variety was registered in the Netherlands and the CVPO, that it is necessary for one to learn the parentage of the

plant to be able to propagate the plant; such information is not available at the Dutch office (information is given out to third parties when the registrant gives permission to do so; that CBA does not grant such permission) and becomes available CVPO after publication of the correct denomination. Here, that the date of correct denomination publication is 15 December 2002; see the enclosed copy of a June 23, 2005 letter to the Examiner from the CPVO. The publication of the denomination took place at a date subsequent to the filing date of the instant application, names July 12, 2001. Thus, access to critical information regarding the plant were not available until after the case was filed." (Response, p. 2) Applicant's traversal is unpersuasive. The Applicant has stated that the plant was on sale abroad on October 1999. See Applicant's response dated 12 July 2005, the attachment following page 3. This attachment includes a copy of the 2000 version of the Chrysanthemum Breeders Association (CBA) catalogue first distributed in November 1999. This includes a page entitled "Spray Chrysanthemums", displaying the denomination 'Cream Elite Reagan'. One of skill in the art would have known where to obtain the claimed plant by, for example searching the internet for the UPOV listed breeder as "Chrysanthemum Breeders Association" internet website at <http://www.cba-nv.nl>. The information set forth on the 23 May 2005 37CFR 1.105 Request for Information sets forth the UPOV listed breeder as "Chrysanthemum Breeders Association" internet website at "Chrysanthemum breedersnv.nl/index.cjf?act=Contact.formulier,CBA N.V.,Rijshornstraat 205, Rijsenhout, P.O. Box 370, 1430 AJ Aalsmeer, Netherlands, Telephone +31 (0)297 34 78 70, [info@cba-nv.com](mailto:info@cba-nv.com). With that information, one of skill in the art could check the availability of the

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claimed plant and where to purchase the plant. Applicant further traverses that "such information is not available at the Dutch office (information is given out to third parties when the registrant gives permission to do so; that CBA does not grant such permission)". (Response, p. 2) However Applicant offers no evidence that CBA did not provide such information.

Applicant traverses saying primarily that one of skill in the art would not have been able to practice the invention lacking information about the parentage of the variety and that such information would not have been available until after the instant case was filed (Response, p. 2). Applicant presents a copy of a letter from the CVPO (European Union) indicating that incorrect information was contained on the UPOV-CDROM no. 2/2005. The letter sets forth "that this denomination (2000/1172) was proposed on 1<sup>st</sup> August 2002, published on 15<sup>th</sup> December 2002 and the variety was granted European plant variety rights under this denomination on 5<sup>th</sup> May 2003 (EU 11.061)".

Applicants traversal is unpersuasive. The cited PBR information is NL PBR CHR 3118 published 19 April 1999, a Dutch PBR application. The CVPO PBR application is not cited.

#### Remarks

4. No claims are allowed.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia Helmer whose telephone number is 571-272-

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0796. The examiner can normally be reached on 10-6 Monday & Tuesday, 1-5 pm Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Georgia Helmer PhD  
Patent Examiner  
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25 November 2007

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